

DCI/IC-78-0309

28 JAN 1978

MEMORANDUM FOR: Director of Central Intelligence

FROM:

[REDACTED]
Acting Deputy to the DCI for the
Intelligence Community

SUBJECT: Drafts of Five Titles of the Proposed
SSCI Charter Legislation

1. Attached, as per your request, are copies of each of the five titles thus far received of the proposed SSCI bill, "National Intelligence Reorganization and Reform Act of 1978." It was originally intended by the SSCI staff that Title V would be devoted to national reconnaissance activities, but no such title has thus far been drafted.

2. The attached draft titles are:

-- Title I, National Intelligence (18 January 1978 version)

- This covers generally the same topics as E.O. 12036, but in more detail. It would change your title to Director of National Intelligence.

-- Title II, Intelligence Activities and Individual Rights (16 January 1978 version--which is being completely rewritten)

- A task group of Community representatives prepared a memorandum for you to send to the SCC members urging action to delay introduction of this title on the ground it is completely unacceptable.

-- Title III, National Security Agency Act of 1977 (29 November 1977 version)

SUBJECT: Drafts of Five Titles of the Proposed SSCI Charter Legislation

- Title IV, Central Intelligence Agency Act of 1978
(25 January 1978 version)
- Title VI, Federal Bureau of Investigation (16 January 1978
version)

3. Scarcely a day passes but what some portion of each of the above titles is the subject of discussion between SSCI staffers and personnel of another intelligence organization. It may well turn out each of the attached draft titles will be changed markedly before it is actually introduced by the SSCI.



STAT

Attachments:
5 Titles

Distribution:

Orig. - Adsee., w/atts

1 - DDCI, w/o atts

1 - ER, w/o atts

1 - SA(JET) Chrono, w/o atts

1 - Acting D/DCI/IC Chrono, w/o atts

1 - SA(JET) Subject, w/o atts

1 - IC Registry, w/o atts

SA-D/DCI/IC

(27 January 1978)

STAT

28 January 1978

NOTE FOR THE DIRECTOR

The attached notes were prepared in the event you had opportunity during your breakfast meeting on 30 January to comment on our problems with Title II of the SSCI's proposed charter legislation.

These notes supplement the material we provided you already --including the draft memorandum from you to SCC members which was prepared on the basis of a meeting [redacted] [redacted] held with Community representatives on 26 January (before we were aware that Senator Bayh had agreed Title II would be completely rewritten).

The memorandum contained no specifics concerning our problems with the 16 January version of Title II, and the attached notes are intended to remedy that by providing you some illustrative examples.



ACTION

COMMENTS ON TITLE II
OF SSCI CHARTER LEGISLATION

The following comments relate to the 59-page 16 January version of Title II, "Intelligence Activities and Individual Rights," of the charters legislation the Senate Select Committee on Intelligence proposes to introduce as the "National Intelligence Reorganization and Reform Act of 1978."

All elements of the Intelligence Community consider the 16 January version of Title II is unworkable and a flagrant violation of Executive Branch prerogatives for the conduct of its internal operations. Procedures to be followed are set out in Title II in tortuous detail.

The 16 January version is reported to be in process of complete revision, and a new draft is expected to be available by close of business on 30 January.

The comments that follow are intended as illustrations of some of the reasons why Intelligence Community representatives object to the 16 January version.

(All underlinings within the quoted excerpts are added.)

Section 202, "Statement of Findings"

The perjorative tone of this section, accusing intelligence agencies of various types of illegal activity in the past, is perhaps appropriate for a committee report, but seems out of place and unnecessary in a statute.

Section 203, "Statement of Purposes "

Except as regards the prohibition on assassinations, which may be moved from Title I to Title II, there is no recognition in Title II that periods of wartime or extreme emergency could have an impact on the restrictions under which intelligence activities are conducted.

The tone of the entire title is set in 203 (a) (4) as follows:

"It is the purpose of this act --

"(4) to safeguard rights of freedom of expression, privacy and due process of law protected by the Constitution and laws of the United States by the establishment of comprehensive statutory standards and procedures, which shall

provide the exclusive legal authority for all intelligence activities of the United States that may adversely affect the life, liberty or property [sic] of expression of any United States person, or any other person in the United States."

As later sections of the Title II clearly indicate, this title is not limited to what intelligence organizations are prohibited from doing. The approach taken by the drafters is that "this - and only this - can you do."

Under this approach, anything not mentioned is automatically prohibited.

Sec. 205, "Responsibilities of the Attorney General"

The draft Title II requires five and a half pages to describe and list the responsibilities assigned to the Attorney General and direct how he will respond to these responsibilities in the internal organization and functioning of the Department of Justice .

Despite the length of this section, other detailed responsibilities of the Attorney General are spelled out in several other sections of the title.

The responsibilities assigned to the Attorney General are open-ended and quite pervasive.

--Sec. 205 (a) makes it an Attorney General responsibility "to insure" that all intelligence activities of the United States are conducted in conformity with the Constitution and laws of the United States.

--Sec. 205 (a) (1) provides the Attorney General shall "approve or disapprove all regulations or procedures proposed by the Director of National Intelligence or by the heads of the entities of the Intelligence Community to implement any provision of this title."

The burdensome nature of some of the requirements set forth forth in Title II can be illustrated by the following:

--Sec. 205 (a) (7) requires the Attorney General to:

"receive and consider information regarding any intelligence activity that constitutes or is likely to constitute a violation of any law, Executive Order, Presidential directive or Presidential memorandum, and any evidence of possible violation of Federal law by any officer or employee of any entity of the Intelligence Community.

--The Attorney General is then required to report on whatever action he takes not only to the President, the IOB, the Director of National Intelligence, and the head of the

agency concerned, but he is also required to:

"(9) submit a full report in a timely manner to the appropriate committees of the Congress on any intelligence activity by any entity of the Intelligence Community determined by the Attorney General to be a violation of any law, Executive Order, Presidential directive or Presidential memorandum, and any violation of Federal law by any employee of any entity of the Intelligence Community."

Sec. 206, "Collection of Information Concerning United States Persons for Foreign Counterintelligence or Counterterrorism Purposes"

(NOTE: Sec. 207, Collection of Information Concerning United States Persons for Foreign Intelligence Purposes" contains much the same material and the comments on 206 also are applicable to 207.)

These two lengthy sections are considered by CIA personnel to be almost incomprehensible.

Each section provides "no information concerning any United States person may be collected" for the purposes indicated in the titles "except in accordance with this section." Anything not covered is, therefore, prohibited.

In each section there are set out:

- Specific criteria to warrant initiation of collection;
- Limitations on the information to be collected;
- The required written authorization for each technique to be used;
- Techniques that require written authorization from the Attorney General
- Techniques a properly designated official of an intelligence agency can authorize
- Specific time limits on collection activities.

Sec. 206 (h) illustrates the burdensome detail involved:

"(h) The head of each entity of the Intelligence Community shall, subject to the approval of the Attorney General , promulgate roles and regulations --

(1) designating those officials of such entity who are empowered to --

(A) initiate collection of information under the authority of this section;

(B) authorize ...continuation of such collection beyond ninety days...

(C) authorize the use of particular techniques of investigation ...

(2) setting out particular circumstances in which the initiation or continuation of collection of information under the authority of this section would be justified and in which the use of a particular technique would be appropriate;

(3) prescribing procedures by which the incidental

collection of information concerning any United States person who is not the subject of an authorized inquiry may be minimized;

(4) prescribing requirements for the maintenance of written records of the use of particular techniques."

In addition, the Attorney General (or, if a member of the armed services is involved, the General Counsel of OSD) shall

--at least annually review all "inquiries" conducted under authority of the section to determine whether such inquiries have been conducted in accordance with Title II and any rule, regulation or procedure promulgated or approved by the Attorney General.

--submit an annual report to appropriate committees of the Congress on activities conducted under authority of the section.